that private reports of the financial standing of a third person, made to one having an interest in the matter, are privileged. *Fahr* v. *Hayes*, 50 N. J. L. 275, 13 Atl. 261; *Richardson* v. *Gunby*, 88 Kan. 47, 48, 127 Pac. 533, 534. See *King* v. *Watts*, 8 C. & P. 614, 615. And it follows that such communications by an agent to his principal are privileged. *Bohlinger* v. *Germania Ins. Co.*, 100 Ark. 477, 140 S. W. 257; *Mead* v. *Hughes*, 7 T. L. R. 291. Since the defendant may be considered as the agent of the subscriber, the principal case is easily explained. But since a profit-making agency is just as truly the agent of the subscriber, the English rule imposing liability on such a company is an anomaly in the law of libel which may be justified only by the modern tendency to impose on businesses dangerous to life, property or reputation, the risks incidental to their operation. The distinction taken by the English courts is analogous to that between a private, gratuitous surety and a surety company. See 29 HARV. L. REV. 314.

MASTER AND SERVANT — ASSUMPTION OF RISK — STATUTORY ABROGATION: EFFECT ON DEFENSE OF CONTRIBUTORY NEGLIGENCE. — A New York statute abrogates the defense of assumption of risk, but leaves unaltered the defense of contributory negligence. (BIRDSEYE, CON. LAWS OF N. Y. 202, p. 1624.) The plaintiff, a longshoreman, sues under this statute, for injuries sustained by a fall from an obviously insecure and unsafe ladder, which had been furnished him as the only means of descending into the hold where he was working. *Held*, that the plaintiff may be barred on account of contributory negligence if found to have used the ladder carelessly, but not on account of the fact that he used it at all. *Maloney* v. *Cunard Steamship Co.*, 54 N. Y. Law Jour. 2067 (Court of Appeals).

The defenses of contributory negligence and assumption of risk, though frequently confused, are fundamentally distinct. See 49 L. R. A., 49, note. For assumption of risk bars the employee on the ground that by his acquiescence he has either waived or negatived the employer's negligence — while contributory negligence bars him because his action or inaction contrary to the standard of the ordinary prudent man, was a contributing cause of the injury. See Bohlen, "Voluntary Assumption of Risk," 20 HARV. L. REV. 14, 17, 18. Still the two defenses are frequently concurrent. Thus the mere use of an appliance which is so dangerously defective that the ordinary reasonable man would refuse to use it at all, will bar the employee on both grounds. See *Narramore* v. *Cleveland, etc. Ry. Co.*, 96 Fed. 298, 304; *Bradburn* v. *Wabash R. Co.*, 134 Mich. 575, 579, 96 N. W. 929, 931. Hence, in the principal case, even though the defense of assumption of risk has been removed, a narrow construction of the statute would allow the jury to refuse recovery to the plaintiff merely because he used the ladder. But as it is inconceivable that a legislature would intend to abrogate the defense that an employee, by encountering his employer's negligence, has waived it, and yet bar the employee on the ground that he was contributorily negligent in encountering it; a broader reading of the statute, by which the defense of contributory negligence in so far as it is based on the mere use of a dangerous appliance is impliedly removed, is clearly more desirable.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — MEASURE OF COMPENSATION — GENERAL FALL IN WAGES DISTINGUISHED FROM LOSS IN EARNING CAPACITY THROUGH ACCIDENT. — A workman was partially incapacitated. The Massachusetts act provides that in case of partial incapacity the workman is to be paid "one-half the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter." (1911, MASS. STAT. c. 751, pt. 2, § 10.) Before the accident he was earning $22 a week; now he is able to earn only $13.20. The Industrial Board found that if he had not been injured he would earn $19.40 in

the present state of the labor market, but that if the labor market had held constant he would now earn $15 with the handicap of his injury. He was awarded $8.80, the difference between his past and his present wages. *Held*, that the award be modified to $7, the difference between his past wages and what he would be earning now if it were not for the fall in the labor market. *In re Durney*, 111 N. E. 166 (Mass.).

The British Workmen's Compensation Act (6 EDW. 7, c. 58, sched. 1, § 3), wherein the difference between past and present wages is set as a maximum, to be awarded in full only when proper in the circumstances, has been held to contemplate a compensation only for a diminution in earning power through an injury, not through a decline in the labor market. *Merry & Cuninghame* v. *Black*, 46 Scot. L. R. 812, 2 B. W. C. C. 372. See *Cardiff Corporation* v. *Hall*, [1911] 1 K. B. 1009, 1018, 1026, 4 B. W. C. C. 159, 168; *Dobby* v. *Wilson Pease Co.*, 2 B. W. C. C. 370, 371. *Cf. Thompson* v. *Johnson*, [1914], 3 K. B. 694, 7 B. W. C. C. 479; *Jamieson* v. *Fife Coal Co.*, 40 Scot. L. R. 704. In spite of the unqualified language of the statute in the principal case, to apply the theory developed by the English courts is more in accord with the fundamental purpose of workmen's compensation. And because of their essentially remedial nature, their fundamental purpose should be made operative by a liberal construction. See *Ryalls* v. *Mechanics' Mills*, 150 Mass. 190, 193, 22 N. E. 766, 767; *Colorado Milling, etc. Co.* v. *Mitchell*, 26 Colo. 284, 287, 58 Pac. 28, 30. See 28 HARV. L. REV. 307, 308. Thus, in the principal case, since the difference between the plaintiff's actual past wages and his actual present wages includes a slump in the labor market, that difference should not be made the basis of compensation, but either the scale of wages at the time of injury, or at the time of recovery, should be used throughout the computations. As the use of either basis is equally violative of the literal language of the act, and as the difficulty of estimating the average labor market for the entire period of compensation demands the selection of a market at a single arbitrary time, the rule of the principal case would seem the more natural. But *cf. Bevan* v. *Energlyn Colliery Co.*, [1912] 1 K. B. 63, 5 B. W. C. C. 169. And, though the purpose of the act is not to indemnify for injury, since it aims to measure the relief given to a workman of any particular standard on the basis of the full loss occasioned by the injury regardless of extrinsic occurrences, when the scale of wages has risen, the labor market should be equalized just as when it has fallen. But *cf. Pomphrey* v. *Southwark Press*, [1901] 1 Q. B. 86, 3 W. C. C. 194; *Irons* v. *Davis & Timmins*, [1899] 2 Q. B. 330, 1 W. C. C. 26. However, the fact that the present English act, after providing for the modification of awards to accord with what is proper in the circumstances, expressly sets the actual loss in wages as a maximum, may afford a distinction in this respect.

PARTITION — RIGHT OF TENANT UNDER "OIL LEASE" TO COMPEL PARTITION. — A tenant in common of certain land, purporting to be the sole owner, granted the exclusive rights to search for and take away oil and gas, together with all other rights reasonably necessary to do this. In order that he may exercise his rights upon his grantor's share of the land the grantee now sues the co-owners to compel a partition in kind. This the pleadings admit will be just. *Held*, that the suit is not maintainable. *Gulf Refining Co. of La.* v. *Hayne*, 70 So. 509 (La.).

The common law rule is that no one but the holder of a legal estate in possession can compel partition in his own right. See FREEMAN, CO-TENANCY AND PARTITION, 2 ed., § 446; 1 TIFFANY, REAL PROPERTY, § 175. The provisions of the Louisiana code as to partition are conflicting. See LA. REV. CIV. CODE, Art. 740, 1310. Under the civil law partition may be compelled by any obligee of a co-owner. See CODE NAPOLÉON, Art. 1166. See 34 CARPENTIER ET DU SAINT, RÉPERTOIRE DU DROIT FRANÇAIS, 149 (No. 766). Now it is generally